



**Australian Karting Association Limited (AKA Ltd)**

**ABN 97 160 100 265**

**Registered Office: 12 Macquarie Avenue, Penrith, NSW 2751**

**Special General Meeting 21 January 2019 – Explanatory Notes**

**By Notice given to Ordinary Members on 20 December 2018 AKA Ltd. convened a Special General Meeting at the request of Ordinary Members that is to take place on 21 January 2019 at 10.00am (Queensland time) at Platinum Business Aviation Centre; 30 Eastern Avenue, Bilinga Qld. by teleconference.**

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### **BUSINESS OF THE MEETING**

1. To pass a resolution that the conduct of Karting (New South Wales) Inc. (KNSW) through the actions of its Board and/or agents and/or representatives has brought the sport of karting into disrepute and that such actions constitutes misbehaviour within the sense contemplated by Rule 3(b) of AKA's Constitution and/or conduct that renders KNSW not being of fit and proper character to remain a member of AKA Ltd.

And

2. To pass a resolution that as a consequence of its misbehaviour and/or not being of a fit and proper character Karting (New South Wales) Inc be expelled as a member of AKA Ltd.

**Note: The Directors of AKA Ltd support the passing of both resolutions set out above and strongly recommend to the Ordinary Members to vote in favour of these resolutions for the reasons set out in the Explanatory Notes.**

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### **Explanatory Notes**

The Ordinary Members of AKA Ltd have become seriously concerned in relation to certain conduct of Karting (New South Wales) Inc (KNSW) through the actions of its board and/or agents and/or representatives and the negative impact such conduct is having on the sport of karting and the operations of AKA Ltd.

The purpose of this Special General Meeting is to afford KNSW the opportunity to explain its conduct including breaches of the Constitution of AKA Ltd, Memorandum of Understanding dated 2 October 2013 ("MOU") (including but not limited to Clauses: 2.1, 2.2, 3.1 and 3.2) and AKA Ltd's Rules and Regulations when at all times it has been an Ordinary Member of AKA Ltd and a party to the MOU and to present any evidence or arguments in relation to that conduct, and behaviour

which may or may not constitute misbehaviour within the sense contemplated by Rule 3 of AKA Ltd's Constitution and/or may or may not be conduct that renders KNSW not being of a fit and proper character to remain a member of AKA Ltd and to enable members to consider and vote on the meeting resolutions.

On 4 January 2019 a letter was received from the President of Karting Queensland requesting the AKA Ltd Board (Board) to prepare a letter for distribution to the Ordinary Members outlining the concerns of KA Queensland and other Ordinary Members that led them to support the call for a general meeting to pass the resolutions. A copy of that letter was distributed by AKA Ltd to Ordinary Members on 6 January 2019 and AKA Ltd confirmed that the Board would review the letter from Karting Queensland and any other submissions received from members and would then provide a detailed review and commentary on the proposed resolutions and a recommendation as to whether the Board supports the passing of the resolutions.

The Board has now reviewed submissions received from members, the matters of public record and/or which have originated from KNSW or been sent to KNSW by AKA Ltd in response to their claims and/or behaviour and that are referred to herein and has formed the view that KNSW has committed serious breaches of the Constitution of AKA Ltd, the MOU and AKA's Rules and Regulations when at all times it was an Ordinary Member of AKA Ltd and a party to the MOU.

Further, the Board is of the view that KNSW's conduct has created an untenable relationship with AKA Ltd and its members and constitutes misbehaviour under rule 3 of AKA Ltd Constitution and that this conduct means KNSW is not of a fit and proper character to remain a member of AKA Ltd. Matters relied upon by the Board in support of this position are set out below.

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## **RESOLUTION 1**

To pass a resolution that the conduct of Karting (New South Wales) Inc (KNSW) through the actions of its board and/or agents and/or representatives has brought the sport of karting into disrepute and that such actions constitutes misbehaviour within the sense contemplated by Rule 3(b) of AKA's Constitution and/or conduct that renders KNSW not being of fit and proper character to remain a member of AKA Ltd.

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### **Matters Relied Upon in Support of Resolution 1**

#### **Dissemination of False Information**

1. KNSW, through the actions of its board and/or agents and/or representatives, has disseminated false and misleading information in relation to the following matters:
  - a. By falsely asserting that directors of AKA Ltd were: -
    - i. in actual or potential breach of their duties as directors of AKA Ltd, including acting whilst conflicted, by failing to adequately disclose conflicts of interest;
    - ii. acting in breach of AKA Ltd's constitution and by misleading members;
    - iii. failing to abide by or to ensure that its officers and employees abide by AKA Ltd's policies, and in particular the Member Protection Policy, including by failing to protect individuals and Members;
    - iv. intentionally seeking to undermine and discredit KNSW and individuals of its board;
    - v. not acting in the best interests of AKA Ltd's members; and
    - vi. that the CEO was acting as a "shadow director" of AKA Ltd.

These allegations were made without any particulars and arguably constitute a gross and indefensible defamation of the Board of AKA Ltd and its CEO.

These allegations were contained in an email dated 2 September 2018 that was sent by KNSW to NSW Clubs.

- b. By misleading the NSW Clubs and the general Australian karting community by falsely asserting that:
  - i. AKA Ltd had been hiding the fact that AKA Inc. had not yet been wound up and that the Board had failed "to disclose this to anyone".
    - KNSW was aware AKA Inc. still existed as it is a unit holder with it in the Unit Trust for the Penrith property.
  - ii. the trusteeship of the TDF Trust had not been transferred to AKA Ltd from AKA Inc.

- The TDF Trust reports have been published with the Annual Reports for AKA Ltd for several years and quite clearly show AKA Ltd as the Trustee of the Trust.
- iii. the board of KNSW needed to “move to protect the value of the (Track Development) Fund for its beneficiaries.”
  - iv. Clubs who have loans from the TDF Trust need to take legal “advice on who has the authority to forgive loans (if this has been offered to you).”
  - v. KNSW and NSW clubs were not liable for immediate repayment of TDF loans in the event that KNSW withdrew its affiliation with AKA Ltd;

The Board is of the view that these allegations were made to falsely create a narrative that the Board and the CEO were acting unconstitutionally, ultra vires the TDF Trust Deed and were deceiving the Ordinary and Associate Members and were misusing and/or misappropriating the funds in the TDF Trust.

These allegations were contained in a letter dated 7 September 2018 that was disseminated to all members of KNSW.

- c. By falsely asserting that the directors of AKA Ltd and the CEO failed to provide information about governance and administration of the sport, and made representations to KNSW members, over a 5-year period that went “to the heart of transparency and trust”.

This allegation is without foundation and the Board is of the view that it was made to falsely create a narrative that the Board and the CEO could not be trusted and hid information from members.

This allegation ignores the comprehensive reports regularly provided to members, was made without any particulars and arguably constitutes a gross and indefensible defamation of the Board and its CEO.

This allegation was contained in a letter dated 7 September 2018 that was disseminated to all members of KNSW.

- d. By falsely representing or allowing to be represented the suggestion that AKA Ltd had completed the review of its constitution in order to replace the memoranda of understanding that exist between AKA Ltd and state and territory associations and that it would be voted upon at the 2018 AKA Ltd Annual General Meeting. This was reported on at a general meeting of KNSW held on 24 February 2018 during the Director of Administration’s Presentation at that meeting and the presentation was subsequently uploaded to the KNSW web site.

- e. By falsely representing to members that a majority portion of NSW competitor licencing and permit fees go to AKA Ltd , that State Championship level and above Permits are only available to AKA Ltd via KNSW and that questions put to the Board at the AKA Ltd AGM were only partially answered inferring that AKA Ltd did not answer all questions or that they were not answered fully.

These allegations were contained in a letter dated 30 July 2018 that was sent by KNSW to all KNSW members.

- f. By falsely asserting that KNSW was solely recognised in New South Wales by the Office of Sport to issue permits and conduct track inspections in New South Wales;

These allegations were contained in a letter dated 7 September 2018 that was sent by KNSW to all members of KNSW.

- g. By falsely asserting that KNSW is the only body within NSW to have the right under Legislation to issue permits.

This information was contained in various documents including, “Karting New South Wales - Goals and Vision For The Future An Open Letter To All KNSW Members” undated but sent by KNSW to all members of KNSW on 7 September 2018 and “Rebuilding the Sport Summary” dated 17 September 2018 published by KNSW.

The Board is of the view that these allegations were made by KNSW to falsely create a narrative that any Club that decided to remain affiliated with AKA Ltd would not be able to obtain Organising Permits and therefore would not be able to organise race meetings.

- h. By falsely representing that a majority vote by Clubs in support of the KNSW bundled resolution to disaffiliate from AKA Ltd that was distributed on 1 September would result in all Clubs being required to disaffiliate from AKA.

Specifically, “If the vote carries by majority, all Clubs within NSW will disaffiliate from KA. We will then issue KA our 30 day notice of withdrawal.”

This statement was sent by KNSW to all members of KNSW on 7 September 2018 “Karting New South Wales - Goals and Vision For The Future An Open Letter To All KNSW Members”

The Board is of the view that this was done with the purpose of confusing, misleading and deceiving the member Clubs. The vote of any individual Club to

support the KNSW bundled motion could never be binding on any other NSW karting Clubs – they are separate entities able to make their own decisions.

- i. By falsely representing or allowing to be represented that AKA Ltd and the CEO and Chairman of AKA Ltd give preference to the elite and privileged, and that they have done so deliberately at the expense of grassroots karters so as to look after sponsors and friends at the expense of Clubs and licence holders.

That AKA Ltd was suggesting clubs leave KNSW and directly affiliate with AKA Ltd where the clubs will have no right to vote and no right to have a say.

This was done in an article written by Andy Ticehurst, KNSW Director of Promotion, Marketing and Media and published on the website “The Motorsport Channel” at [www.rubberdown.com.au](http://www.rubberdown.com.au).

These allegations were made without any particulars and arguably constitute an indefensible defamation of the Board and its CEO.

- j. By orally representing to clubs that last year KNSW paid AKA Ltd \$350,000 and only got back \$16,000 in return.

This statement was made on several occasions by a director of KNSW to NSW Club Presidents including the Presidents of the Canberra and Sapphire Coast Kart Clubs. This statement was grossly misleading and meant to deceive.

The Board is of the view that these allegations were made to falsely create a narrative that the Board were acting to the detriment of KNSW and the member Clubs by extracting vast amounts of money from the sport in NSW so as to portray the Board as money-grubbers that have no interest in the financial wellbeing of clubs and KNSW so as to hide the financial excesses of KNSW.

- k. By representing to clubs that KNSW had obtained “like for like” insurance for the 2019 year. KNSW’s insurance coverage is inferior to AKA Ltd.’s insurance coverage in many aspects.

This was announced at the KNSW Information Day held on 1 December 2018 and is detailed in the presentation titled “Karting (NSW) Inc KNSW Member Information Forum 01 December 2018” that was subsequently sent by KNSW to all members of KNSW on 7 December 2018.

The Board is of the view that this was done with the purpose of confusing, misleading and deceiving the member Clubs and members into believing that the clearly inferior KNSW Public Liability and Personal Accident insurance cover that KNSW had procured was of the same quality as AKA Ltd.’s insurance program.

- I. By media release dated 3 December 2018 KNSW advised a (non-existent) data breach had occurred and advised members that their financial details may be at risk.

The Board is of the view that this was done with the purpose of confusing, misleading and deceiving the member Clubs and members into believing that AKA Ltd had either failed to protect sensitive and private data including financial information of members or had itself compromised the sensitive and private data including financial information data of members – data which was either never in the possession of AKA Ltd or that was never compromised – matters of which the State Secretary of KNSW ought to have or would have been aware.

### **Failing to co-operate with AKA Ltd**

2. KNSW has failed to co-operate with AKA Ltd in relation to a number of matters pertaining to the promotion and protection of the sport of Kart Racing with respect to the following matters:
  - a. The implementation of the MyLaps timing system;
    - i. The interference of KNSW in the implementation of a legal decision of the Board to provide a new timing system nationally disrupted the introduction of program in NSW for several months and the Board is of the view that it created a sentiment of distrust of the Board and management of AKA Ltd over what ought to have been a simple implementation project.
  - b. The Plus 1 Project initiative;
    - i. In an email dated 11 April 2018 Mr Filipetto withdrew the invitation that had previously been extended to the AKA Ltd CEO to address the Presidents of the NSW clubs on the Plus 1 Project; *“On behalf of the Board of Karting NSW, I advise you that we are withdrawing the invitation for you to attend and speak at the NSW SKC Meeting on the 4th May 2018.”*
    - ii. In an email dated 11 July 2018 Mr Filipetto stated, “I want our strategy to visibly differentiate from Plus1”.
  - c. In trying to resolve the dispute KNSW refused to observe the dispute resolution requirements of the MOU and further when contacted by a Board Member to try and resolve the matter on a more informal basis, Mr Filipetto said *“why are you calling us ... it’s all too late, the train has already left the station”* or words to that effect.

### **Breaching AKA Ltd’s Rules**

3. Breaching the A1 Process on numerous occasions by writing directly to the Board instead of to AKA Ltd.’s CEO despite being informed by AKA Ltd that this is unacceptable.

The Chairman of KNSW has written to the Board and individual AKA Ltd Directors on numerous occasions, bypassing the National Office and the CEO as they are required under

the long-standing Administrative Procedures of the “A1 Process – Communications Must follow Official Path.”

Letters dated 11 April 2018, 30 July 2018 and 21 August 2018 were all sent by KNSW, or representatives of KNSW directly to member/s of the Board. Rather than communicate with the Board in the prescribed manner, KNSW undertook an ASIC search to obtain the addresses of all Directors.

This is despite the AKA Ltd Chairman writing to Mr Filipetto on 4 July 2018 and also subsequent to that date requiring KNSW to, amongst other things:

*“Ensuring that all communications from KNSW to KA from this point forward comply fully with the requirements of the A1 Process as follows:*

*“A1 Communications must follow the official path:*

*a) Official communications should be in written form.*

*b) Communications from State Associations to and with KA will generally (in the first instance) be through the KA National Office.*

*h) All other communications with KA are to be directed to the CEO.””*

4. Breaching the Judicial Rules and failing to recognise AKA Ltd suspensions. Failing to implement clear directions from AKA Ltd in relation to Protests, Appeals and Disciplinary matters including making what the Appeal Tribunal considered to be a vexatious protest against Mr D Laughton, then failing to lift a suspension imposed on him following lodgement of an appeal by AKA Ltd in accordance with the Rules. Further after AKA Ltd lifted the suspension (after having issued 3 separate instructions to KNSW to do so) KNSW reinstated the suspension on CMS based on an unenforceable rule in their Constitution that denied Mr Laughton procedural fairness and natural justice.
5. Failing to pay invoices received from AKA Ltd for licence fees, parts and stationery and TDF driver levies. As at 20 December 2018, the outstanding payments owed to AKA Ltd amount to \$34,835.20. The outstanding amount due and payable to the AKA Track Development Fund Trust at the same date is \$3,383.00.
6. Failing to comply with directions from AKA Ltd to KNSW contained in a letter dated 13 December 2018 from AKA Ltd’s solicitors, Simpson & Philips Solicitors.
7. Failing to comply with directions from AKA Ltd to KNSW contained in a letter dated 13 December 2018 and then breaching Judicial Rules in relation Mr D Haak and Mr M Heard.
8. Charging or attempting to charge permit fees to NSW clubs holding National Championship Rounds, in addition to those permit fees payable to AKA Ltd in accordance with the Rules.



Requiring or attempting to require Clubs that host Nationally permitted Events to pay a secondary Permit Fee in addition to the sole Permit Fee that is prescribed in the National Competition Rules (General Rules Chapter 1 Rule 9, Competition Rules Chapter 5 Rule 1.)

9. KNSW has announced that it does not intend to comply with AKA Ltd's Rules and has actively encouraged Clubs to conduct non-AKA Ltd-compliant karting activities on their Race Tracks since 7 December 2018. Specifically, they have announced that they will conduct karting outside of AKA Ltd rules and will instead, operate from the commencement of 2019 onwards under a KNSW rule book which would include and/or require the non-observance of AKA Ltd requirements to use AKA Ltd's:

- National Competition rules,
- Administrative Processes,
- Hierarchy of events,
- CMS system,
- Racing licences,
- Policies,
- Organising Permits,
- Approved Tyres,
- Classes (at least by name),
- Circuit Safety Standards and Guidelines,
- Judicial system,
- National timing system.

This was detailed in the presentation titled "Karting (NSW) Inc KNSW Member Information Forum 01 December 2018" that was presented at the KNSW Information Day held on 1 December 2018 and subsequently sent by KNSW to all members of KNSW on 7 December 2018.

KNSW has progressively released more information on their intention to not comply with AKA Ltd's Rules since 1 December 2018.

10. By Media Release published by KNSW on 29 November 2018, KNSW announced it had selected tyres for 2 stroke sprint categories for 2019. The use of these tyres is a breach of the National Competition Rules and safety protocols.
11. By Media Release published by KNSW on 7 December 2018, KNSW announced and published extensive rules allowing the immediate use of non-AKA Ltd approved tyres on tracks in breach of AKA Ltd's rules.

### **Breaching Confidentiality**

12. Shortly after the Chairman of KNSW requested to have a 2<sup>nd</sup> representative at an AKA Ltd Executive Commission Meeting in February 2018, such request was denied as all States and Territories are only permitted 1 representative, mentions started to appear on social media that AKA Ltd had refused to allow a KNSW representative to attend the EC meeting.

The CEO of AKA Ltd has stated that it was very clear to him that a member of the KNSW board had leaked (incorrect and grossly exaggerated) details of the private phone conversation that he had had with Mr Filipetto to some members of their affiliated clubs. This was confirmed to the CEO by the General Manager at that time of KNSW, Mr Derek

Ferry. The CEO of AKA Ltd raised this with Mr Filipetto and he confirmed that it did occur but would not confirm which KNSW director or directors had breached confidentiality.

13. On about 9 March 2018, Craig Sargent, KNSW Director Group Welfare and Karting Operations, distributed a draft of a letter that was to be sent by KNSW to AKA Ltd CEO to the Rotax Pro Tour Chief Scrutineer, the State President of Karting Victoria and others, such letter ultimately being sent to the AKA Ltd CEO on 21 March 2018.

Mr Sargent admitted to the AKA Ltd CEO during a telephone conversation, that he distributed the letter to other people well in advance of sending it to the CEO. This was confirmed to the CEO by the President of Karting Victoria shortly after he wrote an email to the CEO related to the letter.

This was further confirmed in an email sent to all State Secretaries by Ms Karen Newton Secretary of KNSW on 29 March and affirmed by Mr Sargent to the CEO during a telephone conversation on the same date.

14. On 21 May 2018 a letter written by KNSW to AKA Ltd only was leaked and published on the FARKU Facebook page.
15. Following the AKA Ltd AGM on 21 May 2018, information from the meeting was released to Peter Edgar and published on his Facebook page.

The AGM commenced at 7:00pm and concluded at 7:27pm. It is inconceivable to think that Edgar's statement made at 11:26am the following day that the "AGM lasted for 27 minutes" could have come from elsewhere other than from an attendee at the AGM. The other Ordinary Members in attendance have all confirmed to AKA Ltd that they did not make any statements of this kind.

As a result of this, various unsubstantiated allegations about the AKA Ltd CEO and Board members were posted by Mr Edgar which were both false and defamatory.

#### **Resolution to Disaffiliate**

16. By proposing a resolution to disaffiliate from AKA Ltd, KNSW has expressed a desire and an intent not to be bound by the Constitution of AKA and the MOU in breach of the terms of both of those documents.

#### **Encouraging Clubs from Other States and Territories to Join KNSW**

17. KNSW has encouraged clubs from other states to join as a member of KNSW. This is a breach of the MOU which only permits KNSW to administer the sport of karting in the region of New South Wales and accept members who are within the Region (clauses 3.3(a)).

This was done by Media Release made by KNSW published on 30 October 2018.

### **Demand for Payment from the TDF Trust**

18. By letter dated 11 October 2018 KNSW made a demand for payment of funds from the TDF Trust in breach of the terms of the TDF Trust Deed. KNSW asserted that it was presently entitled to the sum of \$588,959.11.

The demand for payment and KNSW's claim that it was presently entitled to funds was inaccurate given the terms of the Trust Deed and showed a total disregard for the intention of the Trust and the interests of all other beneficiaries of the Trust.

### **Breaching Karting NSW Code of Conduct**

19. Non-compliance with Clause 3 of the Karting NSW Code of Conduct which states that "They will at all times act in the best interests of AKA Karting Australia".

The Board is of the view that the matters referred to herein, while not exhaustive, demonstrate the conduct of KNSW through the actions of its board and/or agents and/or representatives constitute breaches by KNSW of its obligations pursuant to the MOU, the AKA Ltd Constitution, the National Competition Rules and the Karting NSW Code of Conduct and that has brought the sport of karting into disrepute and that such actions constitute misbehaviour within the sense contemplated by Rule 3(b) of AKA's Constitution and/or conduct that renders KNSW not being of fit and proper character to remain a member of AKA Ltd.

Accordingly, **the Directors of AKA Ltd. recommend that you vote in favour of Resolution 1.**

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## **Resolution 2**

To pass a resolution that as a consequence of its misbehaviour and/or not being of a fit and proper character Karting (New South Wales) Inc be expelled as a member of AKA Ltd.

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### **Matters Relied Upon in Support of Resolution 2**

If the Ordinary Members vote in support of Resolution 1, then the Board is of the view that the behaviour of KNSW warrants the expulsion of KNSW from AKA Ltd.

The power to discipline an Ordinary Member rests with the other ordinary members of AKA Ltd.

The AKA Ltd Constitution provides a specific power to expel an Ordinary Member as one of the ways to discipline a member. In the view of the Board there is no need for the general meeting to contemplate any other form of discipline, nor does the resolution allow for any other form of discipline to be invoked.

The Board is of the view that KNSW have, by their actions and statements over many months shown that they do not want to remain affiliated with AKA Ltd. It is clear that the longer they remain affiliated with AKA Ltd, the greater level of disruption and damage that will be caused to karting not only in NSW but in Australia.

To say that they intend to disaffiliate from AKA Ltd, but at a time of their own choice creates unacceptable uncertainty that is detrimental to the sport and only serves to bring the sport into disrepute.

**The Directors of AKA Ltd. recommend that you vote in favour of resolution 2.**

Dated: 13 January 2019

For and on behalf of the Board of Australian Karting Association Limited

Ross Mallett  
Company Secretary